

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Department of  
Commerce's Formal Complaint and Request  
for Commission Action

ISSUE DATE: January 31, 2006

DOCKET NO. P442, 5243, 5934, 5681, 6287,  
5656, 5936, 6144. 5542. 5981, 5720/C-05-1282

ORDER FINDING JURISDICTION,  
GROUNDS TO INVESTIGATE AND  
REQUIRING ANSWER

**PROCEDURAL HISTORY**

On December 30, 2005, the Department of Commerce (Department) filed a Verified Complaint against:

- Desktop Media, Inc.
- Granite Telecommunications, LLC
- OrbitCom, Inc.
- New Access Communications, LLC
- Choicetel Communications, LLC
- Digital Telecommunications, Inc.
- Mainstreet Communications, LLC
- Tekstar Communications, Inc.
- VAL-ED Joint Venture, LLP d/b/a/ 702 Communications
- Time Warner Telecom of Minnesota, LLC
- AT&T

The Complaint alleged that the CLECs had committed multiple violations of the Minnesota Telecommunications Act and related Commission rules by entering into unfiled agreements charging rates other than the tariffed rates for intrastate switched access service.

The Complaint alleged that the CLECs and AT&T negotiated ten agreements that changed the access rate from the rate listed in the CLEC's intrastate tariff in violation of state law. The unfiled switched access agreements were subject to a protective agreement that restricted the disclosure and existence of the agreement to regulators. The Complaint alleged that the CLECs had knowingly and intentionally violated the statutes and rules listed below and sought monetary penalties under Minn. Stat. §§ 237.461, 237.462 and 237.74:

- Minn. Stat. § 237.07, subd. 1
- Minn. Stat. § 237.09, subd. 1 and 2
- Minn. Stat. § 237.121, subd. 4
- Minn. Stat. § 237.16
- Minn. Stat. § 237.461
- Minn. Stat. § 237.462
- Minn. Stat. § 237.74
- Minnesota Rules 7812.2210, subps. 2, 3, 5, and 9
- Minnesota Rules 7810.0500, subp. 1

## **FINDINGS AND CONCLUSIONS**

### **I. Filing Requirements**

The Commission has reviewed the Complaint and finds that it fully meets the filing requirements of Minnesota Rules 7829.1700.

### **II. Jurisdiction**

The Commission has reviewed the formal Complaint of the Department and finds that it has jurisdiction over the named CLECs' provision of intrastate telecommunications services under Minnesota Statutes Chapter 237, including the following specific grants of jurisdiction: Minn. Stat. §§ 237.16, 237.081, 237.461, 237.462, and 237.74.

### **III. Dismissal of Claims Against Mainstreet Communications and 702 Communications**

The Commission grants the Department's request to dismiss the formal complaint against Mainstreet Communications and 702 Communications, pursuant to Minnesota Rules 7829.1800, subp. 1, based upon the representations of the Department at the January 26, 2006, Commission meeting.

### **IV. Grounds to Investigate**

The Commission further finds that there are reasonable grounds to investigate the allegations raised in the Complaint. The formal Complaint in this matter alleges that by charging untariffed switched access rates to AT&T, the CLECs have violated numerous Minnesota statutes and rules.

The issues in this case are whether the named CLECs have violated Minnesota statutes and rules in the provision of intrastate switched access services to AT&T and, if they have, what remedial action the Commission should take.

### **V. Service of the Complaint**

Having concluded that it has jurisdiction and that investigation is warranted, the Commission will serve the formal complaint on the respondents, together with an order requiring them to file an answer within 20 days. Minn. Rule 7829.1800, subp. 2 and 4, unless notified by a Department filing that a settlement has been reached with a company,

## **VI. Interested Parties**

Interested parties may submit initial comments within 30 days of the Commission's order and reply comments within 10 days of the end of the initial comment period.

The parties shall address the above issues in the course of this proceeding. They may also raise and address other issues relevant to the Complaint.

### **ORDER**

1. The Commission hereby accepts the Complaint as meeting the filing requirements.
2. The Commission finds that it has jurisdiction over this matter.
3. The Commission finds that there are reasonable grounds to investigate this matter.
4. The Commission hereby serves the attached Complaint on all named CLECs and AT&T.
5. The Commission hereby orders the companies to file an answer to the Complaint within 20 days of the service date of the Commission order.
6. Initial comments by interested parties shall be filed within 30 days of this order.
7. Reply comments shall be filed within 10 days of the end of the initial comment period.
8. The Commission hereby dismisses the Complaint as to named parties Mainstreet Communications and 702 Communications.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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